

LEECH TISHMAN ROBINSON BROG PLLC

875 Third Avenue

New York, New York 10022

A. Mitchell Greene

Attorneys for 85 Flatbush RHO Mezz LLC, 85

Flatbush RHO Hotel LLC and 85 Flatbush RHO

Residential LLC, Appellants

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

Chapter 11

In re:

85 FLATBUSH RHO MEZZ LLC, *et al.*,¹

Case No.: 20-23280 (SHL)

(Jointly Administered)

Debtors.

-----X

**APPELLANTS 85 FLATBUSH RHO MEZZ LLC, 85 FLATBUSH RHO HOTEL LLC
AND 85 FLATBUSH RHO RESIDENTIAL LLC'S
STATEMENT OF ISSUES ON APPEAL AND DESIGNATION OF
ITEMS TO BE INCLUDED IN RECORD ON APPEAL**

85 Flatbush RHO Mezz LLC ("Mezz"), 85 Flatbush RHO Hotel LLC ("Hotel") and 85 Flatbush RHO Residential LLC ("Residential" and with Mezz and Hotel, "Appellants" or "Debtors"), by their attorneys, Leech Tishman Robinson Brog PLLC, respectfully submit this statement of issues on appeal and designation of items to be included in record on appeal pursuant to Rule 8009(a)(1) of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") and Local Rule 8009-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York ("Local Bankruptcy Rules"), in connection with their July 20, 2022 Notice of Appeal ("Appeal") taken from the July 6, 2022 Findings of Fact, Conclusions of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: 85 Flatbush RHO Mezz LLC (6184); 85 Flatbush RHO Hotel LLC (5027); and 85 Flatbush RHO Residential LLC (2261).

Law, and Order Confirming TH Holdco LLC's Second Amended Chapter 11 Plan, as modified by this Order, entered by the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") (Docket No. 280) ("Confirmation Order").

As and for their Statement of Issues, Appellants state as follows:

ISSUES ON APPEAL

1. Whether the Bankruptcy Court erred in overruling the Debtors' confirmation objection and entering the Confirmation Order without first holding a hearing to establish the value of the Debtors' 174-room boutique hotel known as the Tillary Hotel Brooklyn, a 64-unit luxury multi-family building and the parking garage located at 85 Flatbush Extension, Brooklyn, New York ("Property")?
2. Whether the Bankruptcy Court erred in overruling the Debtors' confirmation objection and entering the Confirmation Order without first holding hearing to determine the allowed amount of TH Holdco's secured claim?
3. Whether the Bankruptcy Court erred in entering the Confirmation Order without providing the Debtors with an opportunity to confirm their own plan of reorganization and considering the preferences of the Debtors' creditors and equity security holders in accordance with 11 U.S.C. § 1129(c)?
4. Whether the Bankruptcy Court erred in overruling the Debtors' confirmation objection and entering the Confirmation Order before a final adjudication of the adversary proceeding captioned: *In Re 85 Flatbush Mezz LLC v. TH Holdco LLC*, Adv. Proc. No. 22-07022 (SHL) ("Adversary Proceeding")?
5. Whether the Bankruptcy Court erred in overruling the Debtors' confirmation objection and entering the Confirmation Order finding that the TH Holdco plan was proposed with

honesty and good intentions and with a basis for expecting that a reorganization can be effected in “good faith” within the meaning of section 1129(a)(3) of the Bankruptcy Code without taking evidence on the issue and having not adjudicated the Adversary Proceeding claiming TH Holdco improperly acquired its senior secured claim in violation of its Intercreditor Agreement with the Mezzanine Lender ?

6. Whether the Bankruptcy Court erred in entering the Confirmation Order finding TH Holdco was a good faith purchaser under 363(m) of the Bankruptcy Code when it has not yet adjudicated the Adversary Proceeding, the bid deadline had not yet passed and the Bankruptcy Court did not take any evidence supporting the finding?

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

<u>ENTRY DATE</u>	<u>DOCKET NO.</u>	<u>DOCUMENT</u>
7/20/2022	286	Notice of Appeal filed by Arnold Mitchell Greene on behalf of 85 Flatbush RHO Hotel LLC, 85 Flatbush RHO Mezz LLC, 85 Flatbush RHO Residential LLC.
7/20/2022	285	Notice of Appeal filed by Michael Ryan Pinkston on behalf of 85 Flatbush Mezz LLC.
7/15/2022	284	Order Signed On 7/15/2022, Denying Debtors' Motion For Order Disqualifying TH Holdco LLC From Credit Bidding
7/7/2022	282	Transcript regarding Hearing Held on 06/30/22 at 11:39 A.M. RE: Hearing On Confirmation Of Chapter 11 Plan Of Th Holdco Llc Etc.
7/7/2022	281	Findings of Fact and Conclusions of Law - <i>Notice of Entry of Order Confirming Second Amended Chapter 11 Plan Filed By Creditor TH Holdco LLC Related To 85 Flatbush Rho Mezz, LLC, 85 Flatbush Rho Hotel LLC, and 85 Flatbush Rho Residential LLC</i>
7/7/2022	280	Finding Of Fact, Conclusions Of Law, And Order Signed On 7/6/2022, Confirming TH Holdco LLC's Second Amended Chapter 11 Plan, As Modified By This Order
6/30/2022	277	Declaration - <i>Supplemental Declaration of Daryl Hagler In Support of Debtors' Second Amended Chapter 11 Plan</i>
6/29/2022	275	Affidavit / <i>Reply to Opposition of TH Holdco LLC to the Mezzanine Lender's Objection to Confirmation</i>
6/27/2022	268	Second Amended Plan - <i>Purchase and Sale Agreement By and Between 85 Flatbush RHO Hotel LLC and 85 Flatbush RHO Residential LLC as Sellers, and TH Holdco LLC</i>

6/27/2022	267	<i>Declaration of Franco Famularo In Response To (I) Debtors Motion For Order Pursuant To 11 U.S.C. §363(K) Disqualifying TH Holdco LLC From Credit Bidding and Granting Related Relief, (II) Debtors Second Amended Chapter 11 Plan of Reorganization, and (III) In Support of TH Holdcos Second Amended Plan</i>
6/27/2022	266	<i>Objection to Motion for Order Pursuant To 11 U.S.C. § 363(K) Disqualifying TH Holdco LLC From Credit Bidding And Granting Related Relief</i>
6/27/2022	265	<i>Declaration of Franco Famularo In Support of TH Holdco LLCs Request For Confirmation of Second Amended Chapter 11 Plan</i>
6/27/2022	264	<i>Memorandum of Law In Support Of Confirmation of TH Holdcos Plan and In Response To Objections To TH Holdcos Plan</i>
6/24/2022	254	<i>Objection to Motion TH Holdco LLC's Objection to Debtors' Motion Pursuant to Bankruptcy Rule 9006(c) for Order Shortening Notice on Debtors' Motion for Order (I) Preliminarily Approving Disclosure Statement and (II) Scheduling Hearing on the Debtors' Motion for an Order Approving Disclosure Statement and Confirming Debtors' Plan of Reorganization</i>

6/24/2022	253	Notice of Hearing - <i>NOTICE OF HEARING ON (I) MOTION PURSUANT TO BANKRUPTCY RULE 9006(C) FOR ORDER SHORTENING NOTICE ON MOTION FOR ORDER (I) PRELIMINARILY APPROVING DISCLOSURE STATEMENT AND (II) SCHEDULING HEARING ON THE DEBTORS' MOTION FOR AN ORDER APPROVING DISCLOSURE STATEMENT AND CONFIRMING DEBTORS' PLAN OF REORGANIZATION AND (II) MOTION PURSUANT TO BANKRUPTCY RULE 9006(C) FOR ORDER SHORTENING NOTICE ON DEBTORS' MOTION FOR ORDER PURSUANT TO 11 U.S.C. SEC. 363(K) DISQUALIFYING TH HOLDCO LLC FROM CREDIT BIDDING AND GRANTING RELATED RELIEF</i>
6/23/2022	252	Certification of Ballots <i>TH Holdco LLC's Voting Record Certifying Acceptances and Rejections of TH Holdco LLC's Second Amended Plan</i>
6/23/2022	244	Motion to Shorten Time - <i>MOTION PURSUANT TO BANKRUPTCY RULE 9006(c) FOR ORDER SHORTENING NOTICE ON DEBTORS' MOTION FOR ORDER PURSUANT TO 11 U.S.C. SECTION 363(K) DISQUALIFYING TH HOLDCO LLC FROM CREDIT BIDDING AND GRANTING RELATED RELIEF</i>

6/23/2022	243	Motion to Shorten Time - <i>MOTION PURSUANT TO BANKRUPTCY RULE 9006(c) FOR ORDER SHORTENING NOTICE ON DEBTORS' MOTION FOR ORDER (I) PRELIMINARILY APPROVING DISCLOSURE STATEMENT AND (II) SCHEDULING HEARING ON THE DEBTORS' MOTION FOR AN ORDER APPROVING DISCLOSURE STATEMENT AND CONFIRMING DEBTORS PLAN OF REORGANIZATION</i>
6/23/2022	242	Motion to Approve - <i>MOTION FOR ORDER (I) PRELIMINARILY APPROVING DISCLOSURE STATEMENT AND (II) SCHEDULING HEARING ON THE DEBTORS' MOTION FOR AN ORDER APPROVING DISCLOSURE STATEMENT AND CONFIRMING DEBTORS PLAN OF REORGANIZATION</i>
6/23/2022	241	Disclosure Statement - <i>DISCLOSURE STATEMENT FOR SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION OF 85 FLATBUSH RHO MEZZ, LLC, 85 FLATBUSH RHO HOTEL LLC AND 85 FLATBUSH RHO RESIDENTIAL LLC</i>
6/23/2022	240	Second Amended Plan - <i>SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION OF 85 FLATBUSH RHO MEZZ, LLC, 85 FLATBUSH RHO HOTEL LLC AND 85 FLATBUSH RHO RESIDENTIAL LLC</i>

6/22/2022	232	Motion to Disqualify - <i>DEBTORS' MOTION FOR ORDER PURSUANT TO 11 U.S.C. § 363(K) DISQUALIFYING TH HOLDCO LLC FROM CREDIT BIDDING AND GRANTING RELATED RELIEF</i>
6/22/2022	231	Declaration - <i>DECLARATION OF DARYL HAGLER IN SUPPORT OF DEBTORS' OBJECTION TO CONFIRMATION OF SECOND AMENDED CHAPTER 11 PLAN FILED BY CREDITOR TH HOLDCO LLC</i>
6/22/2022	230	Declaration - <i>DECLARATION OF JON DIPIERTA IN SUPPORT OF DEBTORS OBJECTION TO CONFIRMATION OF SECOND AMENDED CHAPTER 11 PLAN FILED BY CREDITOR TH HOLDCO LLC</i>
6/22/2022	229	Objection - <i>DEBTORS' OBJECTION TO CONFIRMATION OF SECOND AMENDED CHAPTER 11 PLAN FILED BY CREDITOR TH HOLDCO LLC</i>
6/22/2022	228	Objection <i>Limited Objection to Plan-New York City Department of Finance and Water Board</i>
6/22/2022	227	Objection to Confirmation of Amended Plan – 85 Flatbush Mezz LLC
6/15/2022	224	Chapter 11 Plan - <i>Notice Regarding Executory Contracts and Unexpired Leases To Be Rejected Pursuant To The Plan</i>

6/15/2022	223	<i>Chapter 11 Plan - Notice of Filing of Plan Supplement For Second Amended Chapter 11 Plan Filed by Creditor TH Holdco LLC Related To 85 Flatbush RHO Mezz, LLC, 85 Flatbush RHO Hotel LLC, and 85 Flatbush RHO Residential LLC</i>
5/31/2022	214	<i>Affidavit of Publication For Notice of Bankruptcy Auction</i>
5/26/2022	213	<i>Notice of Hearing /Notice of Entry of Order Granting TH Holdco LLCS Motion To Approve (I) The Adequacy of Information In The Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots, and (IV) Certain Dates With Respect Thereto</i>
5/26/2022	212	Second Amended Disclosure Statement filed by Lauren M. Macksoud on behalf of TH Holdco LLC
5/26/2022	211	<i>Second Amended Plan Filed By Creditor TH Holdco LLC Related To 85 Flatbush RHO Mezz, LLC, 85 Flatbush RHO Hotel LLC, and 85 Flatbush RHO Residential LLC</i>
5/26/2022	210	Order signed on 5/26/2022 Granting TH Holdco LLC's Motion to Approve (I) The adequacy of Information in the Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots, and (IV) Certain Dates with Respect Thereto.

5/26/2022	209	Transcript regarding Hearing Held on 05/16/22 at 11:08 A.M. RE: Notice Of Hearing/Continued Hearing On Th Holdco Llcs Motion To Approve (I) The Adequacy Of Information In The Disclosure Statement, (II) Solicitation And Notice Procedures, (III) Forms Of Ballots And (IV) Certain Dates With Respect Thereto
5/13/2022	200	<i>Response /TH Holdco LLC'S Reply To The Debtors Objection and The Mezz Lenders Objection To TH Holdco LLC'S Second Amended Disclosure Statement</i>
5/10/2022	199	Objection to Disclosure Statement-85 Flatbush Mezz LLC
5/9/2022	198	Objection to Disclosure Statement on behalf of 85 Flatbush RHO Hotel LLC, 85 Flatbush RHO Mezz LLC, 85 Flatbush RHO Residential LLC.
4/27/2022	196	<i>Notice of Hearing /Continued Hearing on TH Holdco LLC's Motion To Approve (I) The Adequacy of Information In The Disclosure Statement,(II) Solicitation and Notice Procedures, (III) Forms of Ballots, and (IV) Certain Dates With Respect Thereto</i>
4/26/2022	195	Notice of Hearing
4/8/2022	186	Transcript regarding Hearing Held on 04/06/22 at 10:35 A.M. RE: Motion To Approve/Th Holdco Llcs Motion To Approve (I) The Adequacy Of Information In The Disclosure Statement, (II) Solicitation And Notice Procedures, (III) Forms Of Ballots, (IV) Certain Dates With Respect Thereto

4/4/2022	174	<i>Declaration of Franco Famularo In Support of TH Holdco LLC'S Combined (A) Response To Objections To Motion To Approve (I) The Adequacy of Information In The Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots, and (IV) Certain Dates with Respect Thereto and (B) Objection To Debtors Disclosure Statement For Amended Plan of Reorganization</i>
4/4/2022	173	<i>Response /TH Holdco LLC'S Combined (A) Response To Objections To Motion To Approve (I) The Adequacy of Information In The Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots, and (IV) Certain Dates with Respect Thereto and (B) Objection To Debtors Disclosure Statement For Amended Plan of Reorganization</i>
3/30/2022	166	Objection to Disclosure Statement filed by Creditor TH Holdco LLC
3/24/2022	160	Objection to Motion-85 Flatbush Mezz LLC
3/23/2022	159	Adversary case 22-07022. Complaint against TH Holdco LLC
2/24/2022	158	Motion to Approve /TH Holdco LLCs Motion To Approve (I) The Adequacy of Information In The Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of Ballots, and (IV) Certain Dates With Respect Thereto
2/20/2022	152	Disclosure Statement (related document(s) 151) filed by Lauren M. Macksoud on behalf of TH Holdco LLC.
2/20/2022	151	Chapter 11 Plan By Creditor TH Holdco LLC Related To 85 Flatbush RHO Mezz, LLC, 85 Flatbush RHO Hotel LLC, And 85 Flatbush RHO Residential LLC
12/18/2020	1	Chapter 11 Voluntary Petition: 85 Flatbush RHO Mezz LLC

12/18/2020	1	Chapter 11 Voluntary Petition: 85 Flatbush RHO Hotel Residential LLC, Case No. 20- 23281
12/18/2020	1	Chapter 11 Voluntary Petition: 85 Flatbush RHO Residential LLC, Case No. 20-23282

Dated: New York, New York
August 3, 2022

LEECH TISHMAN ROBINSON BROG PLLC
Attorneys for Debtors/Appellants
875 Third Avenue, 9th Floor
New York, New York 10022
Tel. No.: 212-603-6300

By: /s/ A. Mitchell Greene
A. Mitchell Greene